

2020 DISPARITY STUDY

July 19, 2021

Item: 600



- Case law overview
- Utilization results
- Availability approach
- Availability results
- Disparity analysis
- Community engagement
- Program considerations

CASE LAW

1989: *City of Richmond v. JA Croson Company* established the **Strict Scrutiny Standard** of review for race-conscious programs adopted by state and local governments

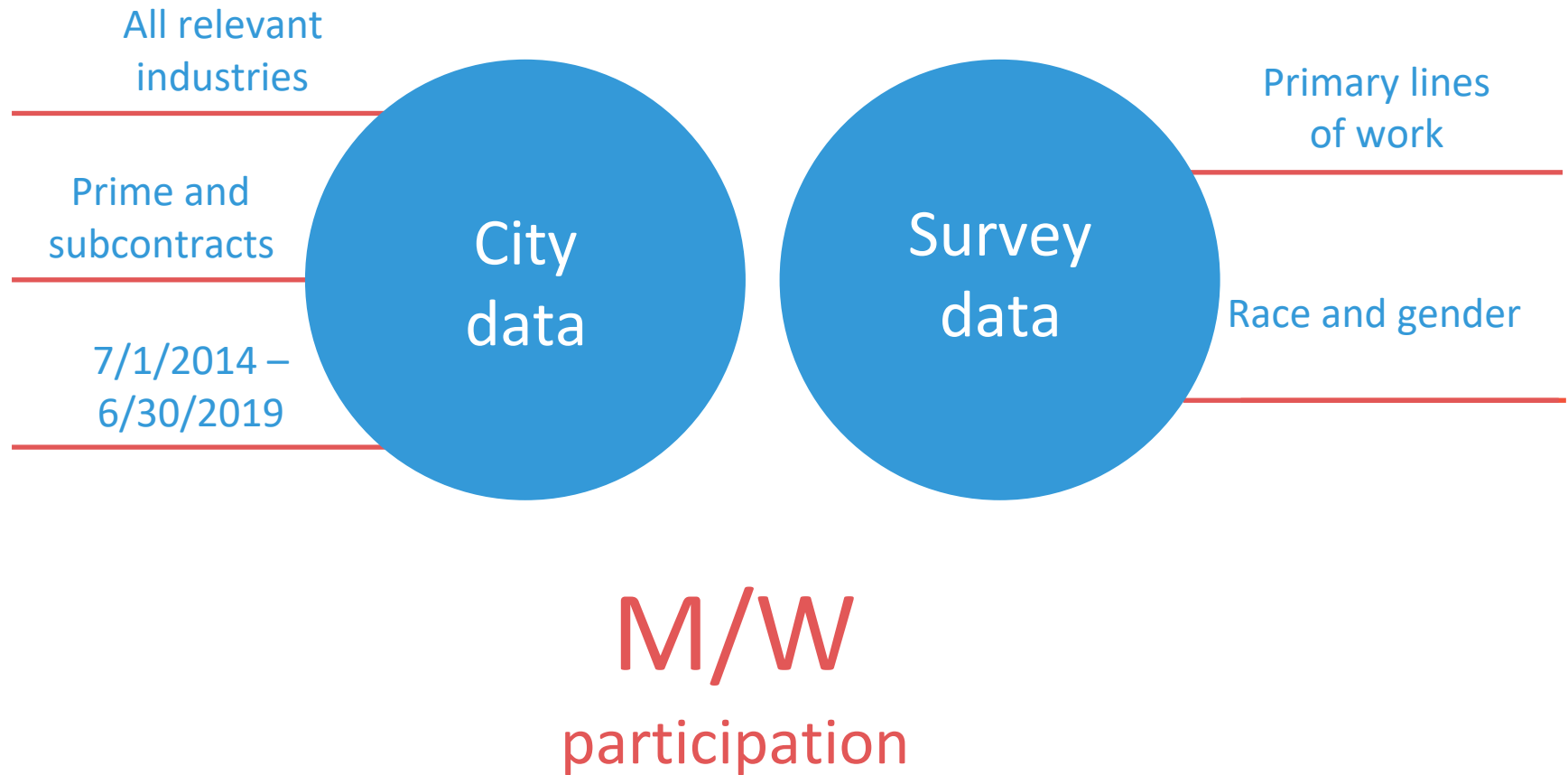
1995: *Adarand Construction, Inc. v. Peña* established strict scrutiny for federal programs

2000: *Hi Voltage Works, Inc. v. City of San Jose* found a race- and gender-conscious purchasing program in violation of Proposition 209

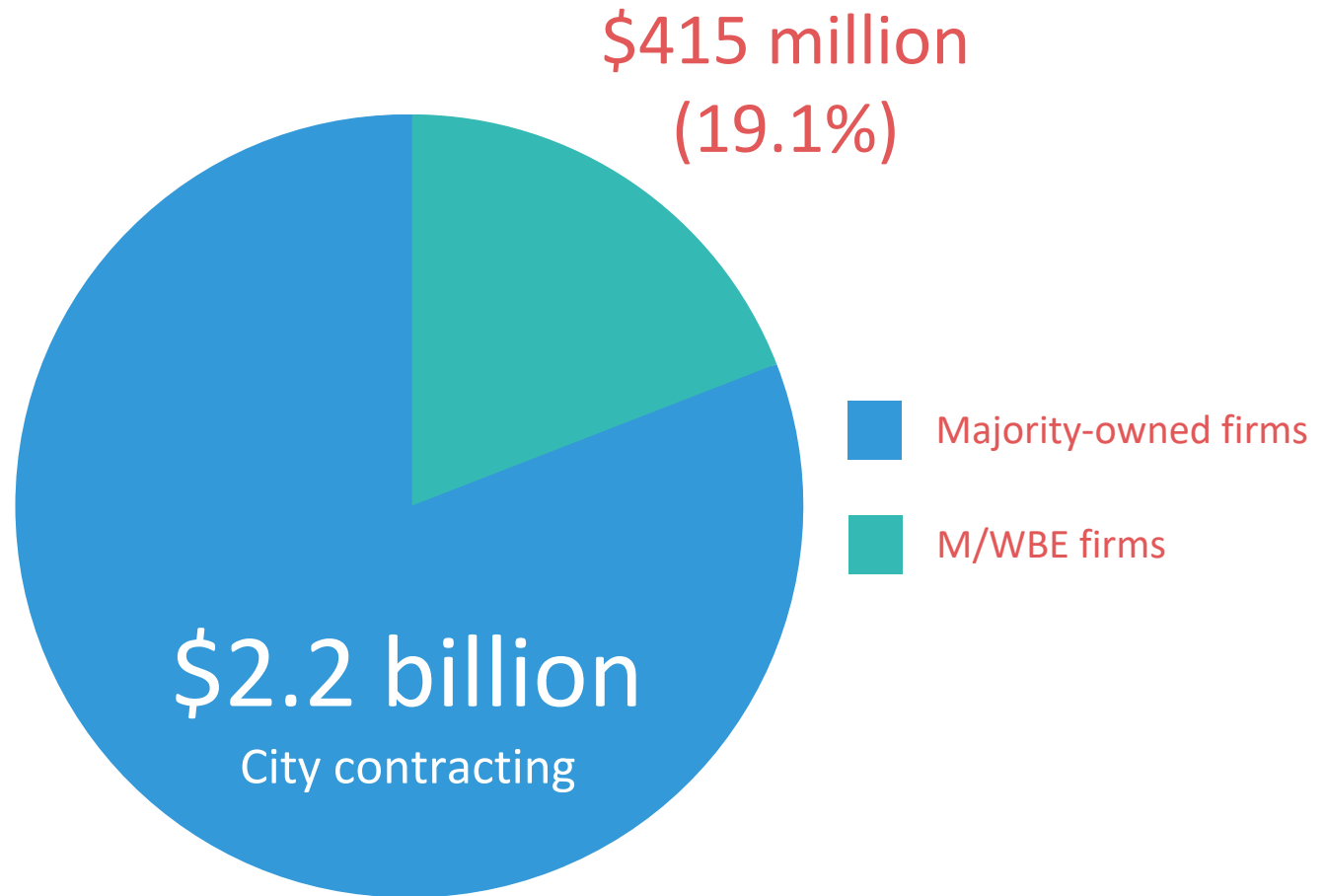
Ninth Circuit decisions have upheld narrow tailoring requirement:

- *Western States Paving Co., v. Washington State DOT*
- *Associated General Contractors of America, San Diego v. Caltrans*

UTILIZATION RESULTS



UTILIZATION RESULTS



UTILIZATION RESULTS

Asian Pacific American	\$24.3 million (1.1%)
Black American	\$4.9 million (0.2%)
Hispanic American	\$204 million (9.4%)
Native American	\$7.5 million (0.3%)
Subcontinent Asian American	\$45.0 million (2.1%)
White woman	\$129 million (5.9%)
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TOTAL	\$415 million (19.1%)

AVAILABILITY APPROACH

Percentage of dollars minority- and women-owned firms are ready, willing, and able to perform

- Custom availability census based on *unbiased* sources
- Accounts for businesses' relative capacity
- Accounts for other relevant business characteristics
- Strongly approved by courts—including Ninth Circuit Court of Appeals—USDOT, and USDOJ

AVAILABILITY APPROACH

“[The BBC] disparity study ... includes ... **extensive statistical evidence** ... which supports the statistical findings of the underutilization faced by DBEs without the DBE program. Add to that the anecdotal evidence submitted ... and this evidence ... **clearly supports a finding that this program is constitutional.**”

– *U.S. District Court for the Eastern District of California*

“[BBC’s disparity study] accounted for the factors mentioned in the Western States Paving [decision] as well as others, **adjusting availability data based on capacity** to perform work and **controlling for [other]... programs.**”

– *Ninth Circuit Court of Appeals*

“[BBC conducted a] **methodically sound disparity study** [including] robust statistical analysis ... [the] sufficiency of BBC's study ... indisputably takes into account considerations identified by ... regulations ... BBC’s availability analysis **[took] into account factors that may affect the relative capacity** of [firms]... .”

– *USDOT and USDOJ Amicus Curiae Brief*

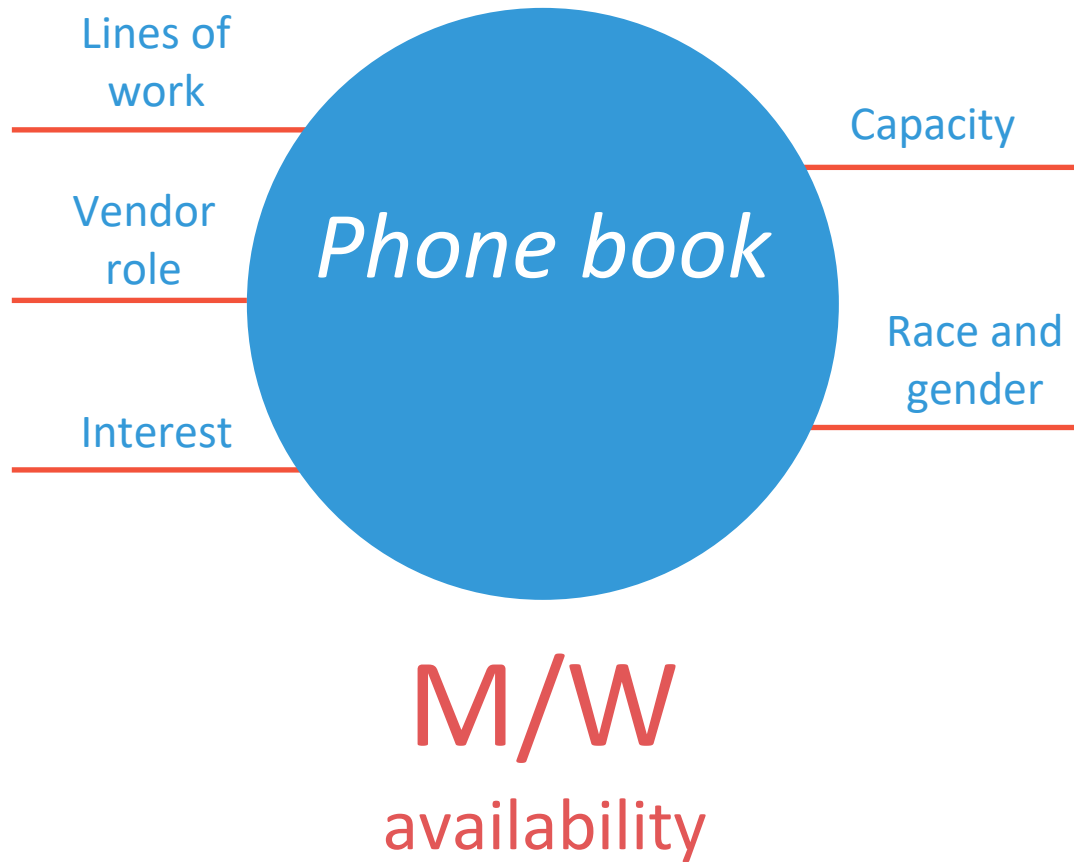
AVAILABILITY APPROACH



*D&B
WorldBase*

- Largest available database
- Thousands of data sources
- Daily data updates
- Frequently used in disparity studies
- Consistently accepted by courts

AVAILABILITY APPROACH



AVAILABILITY APPROACH



- Multiple attempts
- Varying days/times
- Scheduled callbacks



- Web and email options
- Unique survey links
- Quality control

AVAILABILITY APPROACH

Department of Transportation
STANDARD AGREEMENT
WFO 200 (Rev. 04/05)

Consulting Services Agreement - State

INSTRUMENT NUMBER
BBA0062

1. This Agreement is entered into between the State Agency and the Contractor named below:
STATE AGENCY NAME _____
CONTRACTOR NAME _____

2. The term of this Agreement is 6/26/11 or upon DGS approval, whichever is later, through 6/27/13

3. The maximum amount of this Agreement is: _____

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of this Agreement:

Exhibit A - Scope of Work	11 Pages
Exhibit B - Budget Detail and Payment Provisions	4 Pages
Exhibit C - General Terms and Conditions (GTC 6/02)	8 Pages
Exhibit D - Special Terms and Conditions	14 Pages
Exhibit E - Additional Provisions	80 Pages
Attachment 1 - Cost Proposal	2 Pages
Attachment 2 - Technical Proposal	1 Page
Attachment 3 - Bidder Declaration, GSPD-65-105	2 Pages
Attachment 4 - Location and description of documents to be used for study	2 Pages
Attachment 5 - California Design collection systems	1 Page
Attachment 6 - Location and description of documents	2 Pages
Attachment 7 - Sample Subcontracting Request (CSR 1201)	2 Pages
Attachment 8 - Sample Final Report - Utilization of Design/Build/Finance Enterprise	2 Pages

Items shown with an asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at: <http://www.dgs.ca.gov/contracts/contracts.html>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR
CONTRACTOR NAME (if other than an individual, state whether a partnership, partnership, etc.)
By Todd Pickett (Signature) DATE 10/14/2011
TODD PICKETT, Managing Director
ADDRESS _____
CITY _____
STATE _____
ZIP _____

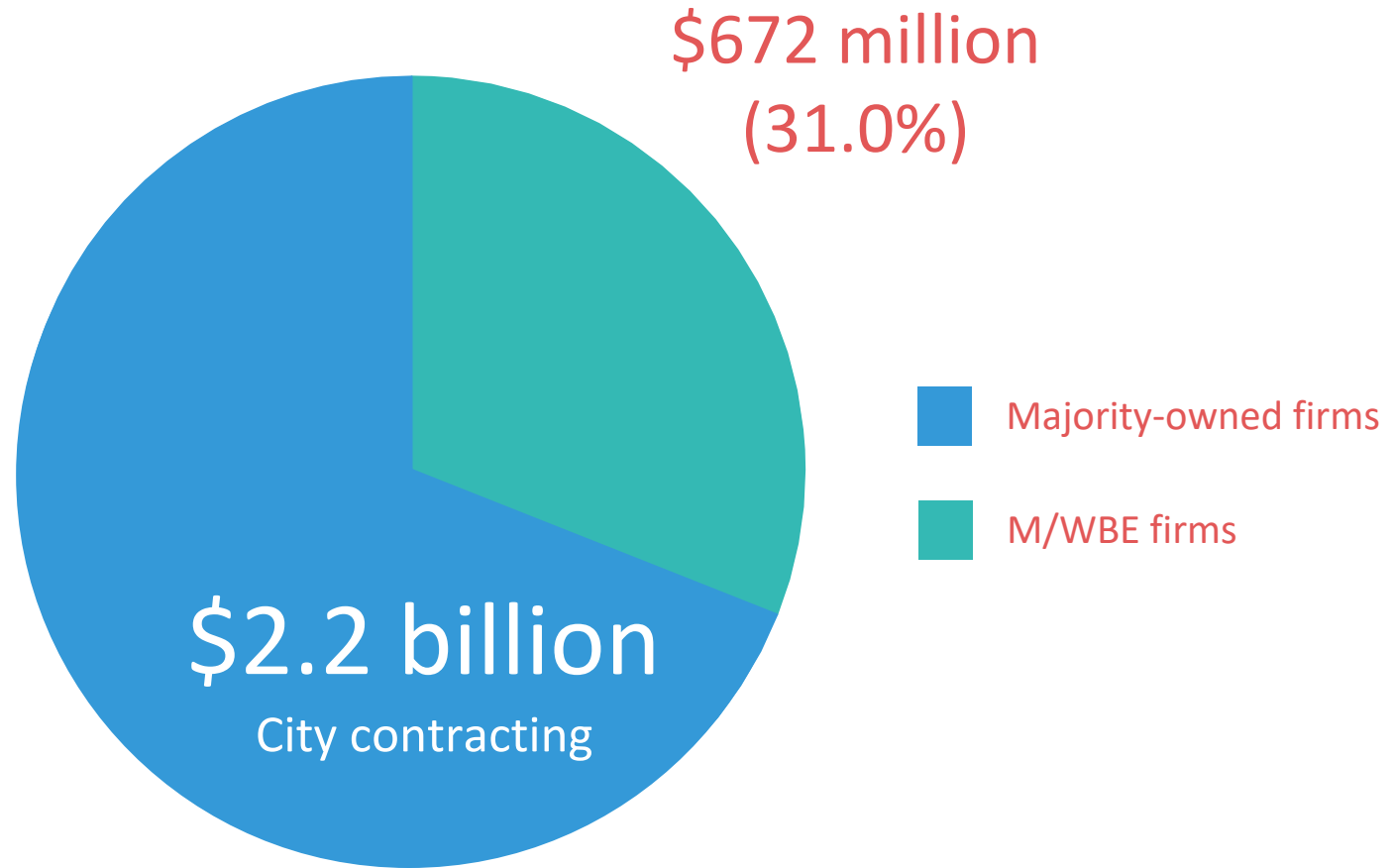
STATE AGENCY
By Leah Wilson (Signature) DATE 10/14/2011
LEAH WILSON, Contract Officer
ADDRESS _____
CITY _____
STATE _____
ZIP _____

Service Date Only
OCT 14 2011
DEPT OF GENERAL SERVICES
synto

- Electrical work
- Subcontract
- 2015 award
- \$1.2 million

- ✓ Firm 1 (Minority)
 - Electrical work
 - Subcontractor
 - 2001
 - \$5 million
- Firm 2 (Woman)
 - Civil engineering
 - Prime contractor
 - 1964
 - \$30 million
- Firm 3 (Majority)
 - Electrical work
 - Subcontractor
 - 1990
 - \$1 million
- ✓ Firm 4 (Woman)
 - Electrical work
 - Subcontractor
 - 1997
 - \$7 million
- • •
- ✓ Firm 300+ (Majority)
 - Electrical work
 - Prime/sub
 - 2010
 - \$2 million

AVAILABILITY RESULTS



AVAILABILITY RESULTS

Asian Pacific American	\$25.8 million (1.2%)
Black American	\$24.7 million (1.1%)
Hispanic American	\$218 million (10.0%)
Native American	\$37.9 million (1.7%)
Subcontinent Asian American	\$5.8 million (0.3%)
White woman	\$361 million (16.6%)
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TOTAL	\$672 million (31.0%)

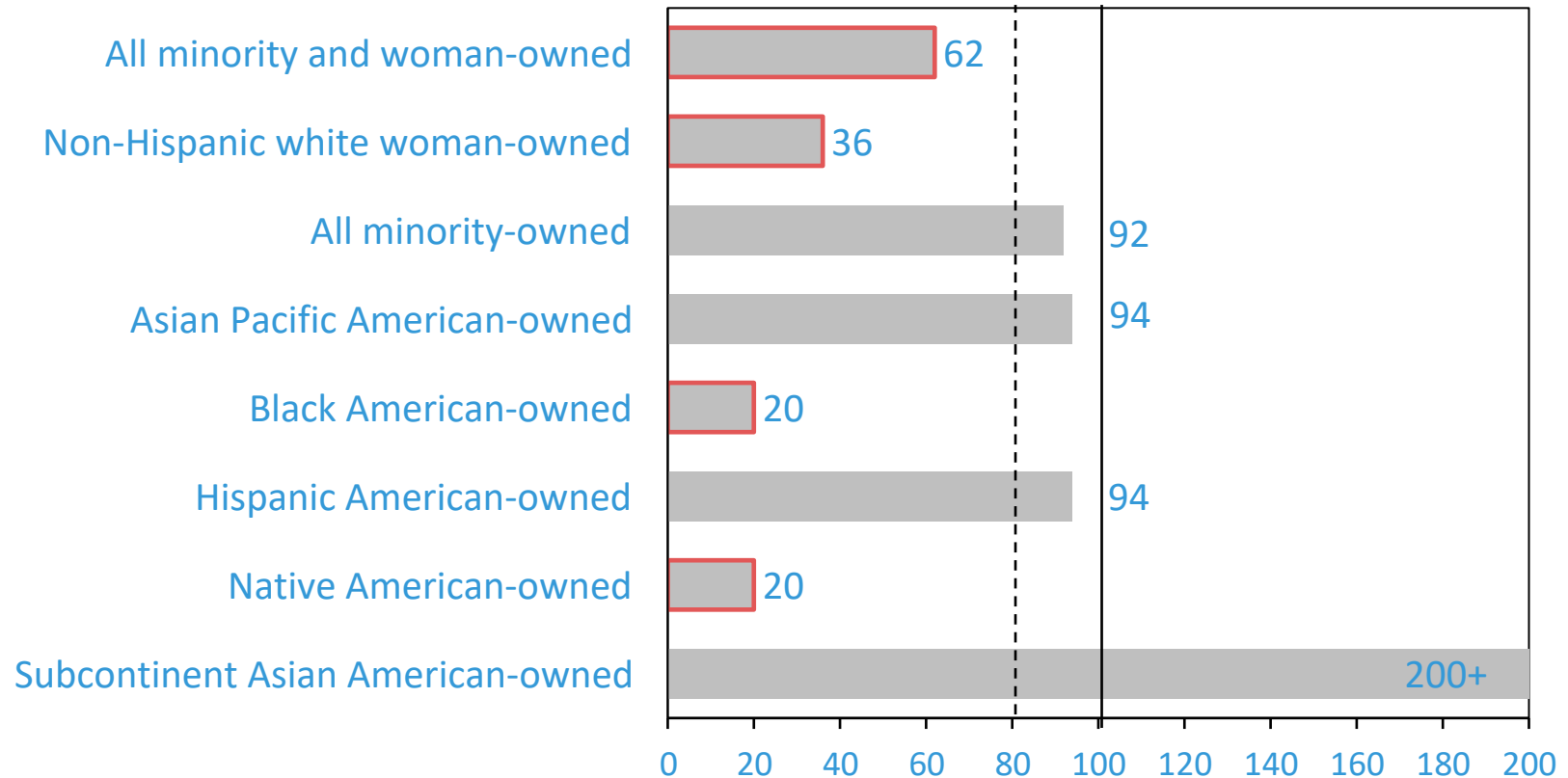
DISPARITY ANALYSIS

$$\frac{\text{M/W participation}}{\text{M/W availability}} = \text{DISPARITY INDEX}$$

.80 = *substantial* underutilization

DISPARITY ANALYSIS

All Contracts



DISPARITY ANALYSIS

Industry

Disparity indices by industry and race/gender			
	Construction	Professional services	Goods and other services
<i>Percent of total dollars</i>	<i>62%</i>	<i>31%</i>	<i>7%</i>
Total Minority- and Woman-owned	87.8	29.8	35.3
Non-Hispanic white woman-owned	59.7	15.9	200+
All minority-owned	107.9	69.9	16.9
Asian Pacific American-owned	57.9	141.2	200+
Black American-owned	154.4	123.5	0.0
Hispanic American-owned	107.8	45.4	12.4
Native American-owned	18.7	21.5	100.0
Subcontinent Asian American-owned	200+	200+	200+

DISPARITY ANALYSIS

Department

Disparity indices by department		
	E&CP	P&C
<i>Percent of total dollars</i>	<i>78.5%</i>	<i>21.5%</i>
Total Minority- and Woman-owned	81.4	24.2
Non-Hispanic white woman-owned	64.4	8.3
All minority-owned	92.8	85.8
Asian Pacific American-owned	87.9	196.9
Black American-owned	155.7	0.0
Hispanic American-owned	91.8	111.6
Native American-owned	20.4	0.0
Subcontinent Asian American-owned	200+	200+

COMMUNITY ENGAGEMENT



Informational efforts

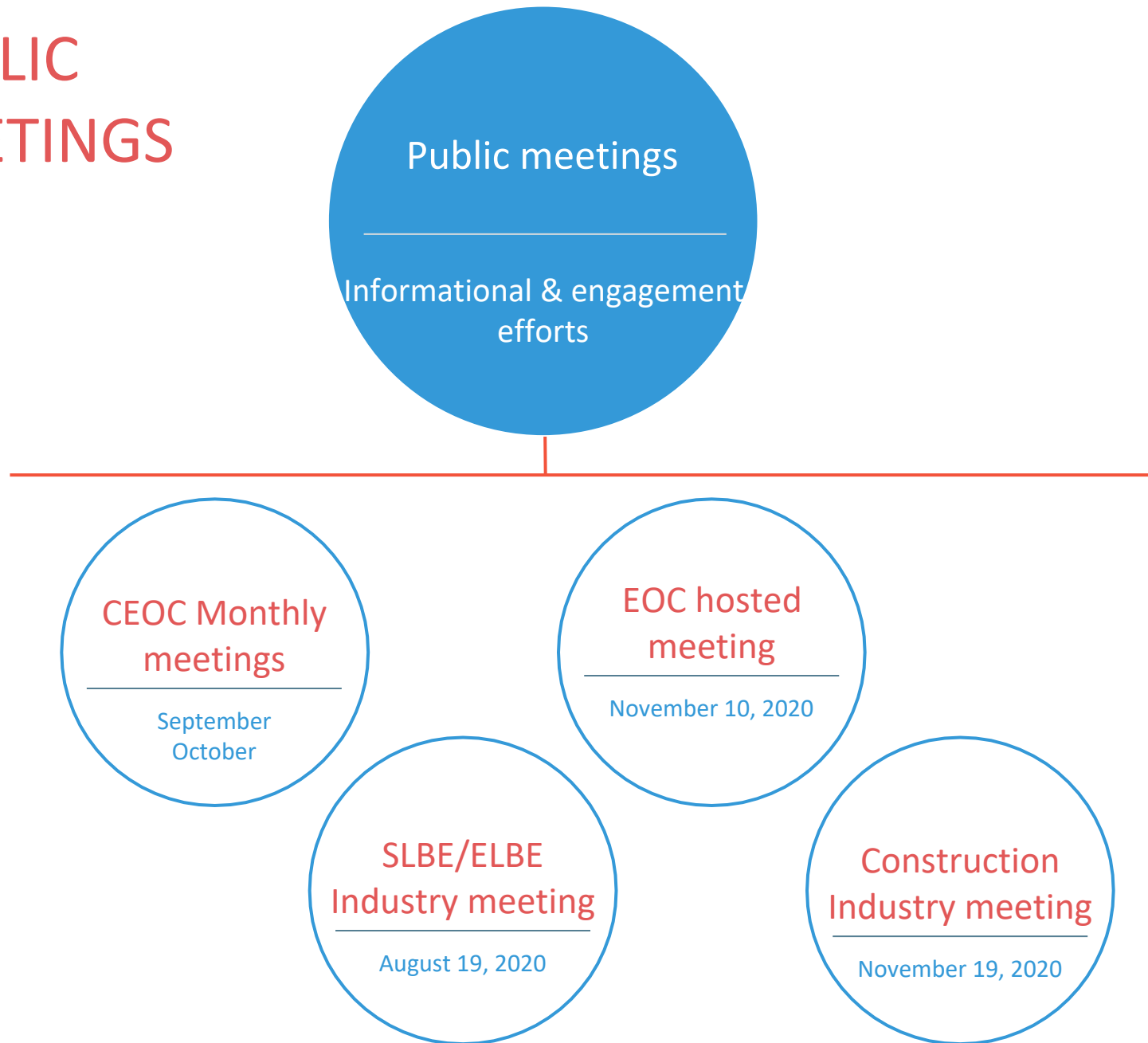
- CEOC
- Webpage/e-mail
- Public notices



Engagement efforts

- Webinars/Public meetings
- Business surveys
- In-depth interviews (40)

PUBLIC MEETINGS



OUTREACH

- American Indian Chamber of Commerce
- American Institute of Architects
- Central San Diego Black Chamber of Commerce
- Chicano Federation
- Council of Philippine American Organizations
- Equality Business Alliance
- Hispanic Chamber of Commerce
- Indian Voices
- Mexican American Business & Professional Association
- NAACP San Diego Branch
- National Association of Minority Contractors Southern California
- National Black Contractors Association
- National Latina Businesswomen Association
- North San Diego Small Business Development Council
- Filipino American Chamber
- San Diego Asian Business Association
- San Diego Association of General Contractors
- San Diego Associated Subcontractors Alliance
- San Diego Equality Business Association
- San Diego Supplier Development Council (SDSDC)
- Society of Hispanic Professional Engineers
- South San Diego Small Business Development Chamber
- Twin Cities
- Veterans in Business Network
- Women's Construction Coalition (WCC)

CONSIDERATIONS



Legal compliance

- Narrow tailoring
- Case law
- Proposition 209



Administrative resources

- Program development
- Implementation
- Certification
- Compliance
- Staffing
- Data monitoring

CONSIDERATIONS

- Mandatory SLBE goals on professional services, goods, and services contracts
- Additional small business prime set-asides
- Unbundling large contracts
- Business development and capacity building
- Overall aspirational goal
- Subcontracting goals (M/WBE)
- EOC Program Manual
- Bonding assistance
- Advertising
- Networking and outreach
- Prompt payment
- Data collection
- Monitoring SLBE/ELBE growth
- Small purchases
- Minimum quotes
- EOC and procurement staffing

QUESTIONS